



**Minority and Women-Owned Business Enterprise (MWBE)  
& Equal Employment Opportunity (EEO) Participation Requirements  
For all NYS Syracuse Regional Airport Authority Contracts and Grants**

Authority: Article 15-A of the Executive Law, 5 NYCRR parts 140-144, Appendix A: Standard Clauses for All New York State Contracts and requirements of any federal law concerning opportunities for minority and women-owned business enterprises which effectuate the purposes of Article 15-A.

**I. General Provisions**

- A.** New York State Executive Law § 310-318, (Article 15-A: Participation by Minority Group Members and Women with Respect to State Contracts – hereinafter “the Statute”), was enacted to promote equality of employment and economic opportunities for minority group members and women in State contracting activities. In 2006, the State of New York commissioned a disparity study to evaluate whether minority and women-owned business enterprises has a full and fair opportunity to participate in state contracting. The findings of the study were published on April 29, 2010, under the title “The State of Minority and Women-Owned Business Enterprises: Evidence from New York” (Disparity Study). The report found evidence of statistically significant disparities between the level of participation of minority and women-owned business enterprises in state procurement contracting versus the number of minority and women-owned business enterprises that were ready, willing, and able to participate in state procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the statewide certified minority and women-owned business enterprise program. The recommendations from the Disparity Study culminated in the enactment and the implementation of New York State Executive Law Article 15-A, which requires, among other things, that the Syracuse Regional Airport Authority (SRAA) establish goals for maximum feasible participation of New York State Certified minority and women-owned business enterprises (MWBE) and the employment of minority group members and women in the performance of New York State contracts. SRAA fully supports the efforts of the State of New York to promote Equal Employment Opportunity (EEO) for all persons, and to promote equality of economic opportunity for minority group members and women who own business enterprises.
- B.** SRAA is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 (MWBE Regulations) for all State contracts as defined therein, with a value: (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or; (2) in excess of \$100,000 for real property renovations and construction. Where deemed appropriate, SRAA will implement the provisions of New York State Executive Law Article 15-A and the MWBE Regulations for all other SRAA contracts. These requirements include equal employment opportunities for minority group members and women (EEO) and contracting opportunities for certified minority and women-owned business enterprises (MWBEs). Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR § 142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, state, or local laws. Contractors participating in and/or selected for procurement opportunities with SRAA shall fulfill their obligations to comply with applicable Federal, State

and Local requirements concerning Equal Employment Opportunity and opportunities for MWBEs including but not limited to the Statute and its implementing regulations as promulgated by New York State's Empire State Development (ESD) Division of Minority and Women's Business Development (DMWBD) and set forth at 5 NYCRR Parts 140-144.

- C. Copies of the required SRAA Forms are identified in this Appendix and available on SRAA's Internet Site at <https://syraairport.org/sraa/supplier-diversity-program/>. The Contractor agrees to complete and submit these forms without change in response to goals specified in the Request for Proposal (RFP) or contract.
- D. Failure to comply with all the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or breach of contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to Section VII of the Appendix or enforcement proceedings allowed by the Contract.
- E. Further information regarding Article 15-A of the New York State Executive Law and the New York State Minority and Women's Business Enterprise Program is available on the [NYS Comptroller's Website](#).

## II. Contract Goals

- A. For purposes of this procurement, the SRAA hereby establishes an overall goal of thirty percent (30%) for Minority and Women-Owned Business Enterprises (MWBE) participation. Additionally, an overall goal of ten to twenty percent (10-20%) is established for Equal Employment Opportunity (EEO) participation.
- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract Goals established in Section II-A hereof, Contractor should reference the [Directory of New York State Certified MBWEs](#).

Additionally, Contractor is encouraged to contact the Division of Minority and Women's Business Development at (518) 292-5250, (212) 803-2414 or (716) 846-8200 to discuss additional methods of maximizing participation by MWBEs on the Contract.

- C. Where MWBE goals have been established herein, pursuant to 5 NYCRR § 142.8, Contractor must document "good faith efforts" to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. In accordance with Section 316-a of Article 15-A and 5 NYCRR § 142.13, the Contractor acknowledges that if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of contract and the Contractor shall be liable to the SRAA for liquidated or other appropriate damages, as set forth herein.
- D. As a condition of the Contract, the Contractor and SRAA agree to be bound by the provisions of § 316 of Article 15-A of the New York State Executive Law regarding enforcement.
- E. SRAA reserves the right to establish separate and different goals on any State Contract, as identified in the specified procurement. For Guidance on what factors SRAA will consider in determining what goals are appropriate in relation to a specific State Contract, refer to 5 NYCRR § 142.2(a)(1) – (6).

## III. Equal Employment Opportunity Requirements

- A. The contractor agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgated by the DMWBD. If any of these terms or provisions conflict with applicable laws or regulations, such laws and regulations shall supersede these requirements.
- B. Contractor shall comply with the following provisions of Article 15-A:

1. Contractor and Subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, religion/creed, color, national origin, sex, age, disability, sexual orientation, military status, predisposing genetic characteristics, victim of domestic violence status or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination and rates of pay or other forms of compensation.
2. The Contractor shall submit an EEO policy statement to the SRAA within seventy-two (72) hours after the date of the notice by SRAA to award the contract to the Contractor.
3. If Contractor or Subcontractor does not have an existing EEO policy statement, the SRAA may provide the Contractor or Subcontractor a model statement (see SRAA 5000 – Minority/Women-Owned Business Enterprises – Equal Employment Opportunity Policy Statement).
4. The Contractor's EEO policy statement shall include the following language:
  - a. The Contractor will not discriminate against any employee or applicant for employment because of race, religion/creed, color, national origin, sex, age, disability, sexual orientation, military status, predisposing genetic characteristics, victim of domestic violence status or marital status. The Contractor will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its workforce.
  - b. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, religion/creed, color, national origin, sex, age, disability, sexual orientation, military status, predisposing genetic characteristics, victim of domestic violence status or marital status.
  - c. The Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, religion/creed, color, national origin, sex, age, disability, sexual orientation, military status, predisposing genetic characteristics, victim of domestic violence status or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.
  - d. The Contractor will include the provisions of Subdivisions (a) through (c) of this Subsection 4 which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.

**C. Staffing Plan - SRAA Form 5001- Equal Employment Opportunity Staffing Plan**

To ensure compliance with this section, the Contractor shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and federal occupational categories. Contractors shall complete the Staff Plan Form and submit it as part of their bid or proposal or within a reasonable time, but no later than the time of award of the contract.

**D. Workforce Employment Utilization Report (Workforce Report) – SRAA Form 5002 – Equal Employment Opportunity Workforce Employment Utilization/Compliance Report**

1. Once a contract has been awarded and during the term of the Contract, Contractor is responsible for updating and providing notice to the SRAA of any changes to the previously submitted Staffing Plan. This

information is to be submitted on a quarterly basis during the term of the contract to report the actual workforce utilized in the performance of the contract by the specified categories listed including ethnic background, gender, and federal occupational categories. The Workforce Report must be submitted to report this information.

2. Separate forms shall be completed by contractor and any subcontractor performing work on the Contract.
  3. In limited instances, Contractor may not be able to separate out the workforce utilized in the performance of the Contract from Contractor's and/or subcontractor's total workforce. When a separation can be made, Contractor shall submit the Workforce Report and indicate that the information provided related to the actual workforce utilized on the Contract. When the workforce to be utilized on the contract cannot be separated out from Contractor's and/or subcontractor's total workforce, Contractor shall submit the Workforce Report and indicate that the information provided is Contractor's total workforce during the subject time frame, not limited to work specifically under the contract.
  4. In the case where the Contractor's and/or subcontractor's workforce does not change within the quarterly period, the Contractor shall notify SRAA in writing.
  5. All forms and reports will be submitted to the SRAA program manager for this contract and forwarded to Tori Hunt at [huntt@syrairport.org](mailto:huntt@syrairport.org).
- E. Contractor shall comply with the provisions of the Human Rights Law, and all other state and federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, religion/creed, color, national origin, sex, age, disability, sexual orientation, military status, predisposing genetic characteristics, victim of domestic violence status or marital status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

#### IV. MWBE Requirements

The contractor acknowledges that it is the policy of the State of New York and of SRAA that MWBEs shall be given the opportunity for meaningful participation in the performance of State contracts. Therefore, Contractors agree to make good faith efforts to solicit active participation to meet established goals under this procurement by MWBEs identified in the ESD directory of certified businesses<sup>1</sup>.

1. For the purposes of this Appendix A, the question of whether a Contractor has engaged in and documented "Good Faith Efforts" to solicit active participation to meet established goals under this procurement by MWBEs in the performance of State Contracts shall be determined by the SRAA Executive Director or his/her designee, after a thorough consideration of the factors listed in 5 NYCRR § 142.8.
2. The separate MBE and WBE participation goals established by SRAA for this procurement are based on the overall availability of MWBEs that have been certified to perform the specific scope of work identified under this procurement. For compliance purposes, these goals should not be construed as rigid and inflexible quotas which must be met but must be targets reasonably attainable by means of applying every good faith effort to make all aspects of the entire Minority and Women-Owned Business Program work.

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<sup>1</sup> All MWBE firms are required to be certified by Empire State Development (ESD) or must be in the process of obtaining certification from ESD. Should the Contractor identify a minority-owned or woman-owned firm that is not currently certified as an MWBE, the Contractor should request that the firm submit a certification application to ESD for an eligibility determination, with a copy to the SRAA MWBE Coordinator. SRAA's MWBE Coordinator will work with ESD to expedite the application; however, it is the responsibility of the Contractor to ensure that a sufficient number of certified MWBE firms have been identified in response to this procurement, in order to facilitate full MWBE participation.

A. The Contractor represents and warrants that Contractor has submitted the following SRAA forms either prior to, or at the time of, the execution of the contract:

1. M/WBE Subcontractor Utilization Plan (SRAA Form 5003)

- a. Contractor agrees to use such MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in Section II-A of this Appendix.
- b. If a Contractor seeks modification to its previously approved MWBE Subcontractor Utilization Plan, the Contractor shall first notify SRAA in writing of such change and obtain approval from SRAA.
- c. Contractor further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, the SRAA shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

2. M/WBE Goal Requirements – Certification of Good Faith Efforts (SRAA Form 5004) to achieve the overall prescribed MWBE participation percentage (30%) goals set forth in the procurement.

3. MWBE Subcontractors' and/ or Suppliers' Letter of Intent to Participate (SRAA Form 5007), which should document the names and signatures of certified MBEs and/or WBEs which have agreed to participate as subcontractors on the Contract.

## V. Waivers

A. For Waiver Requests, Contractor should use SRAA Form 5010 MWBE Subcontractor Request for Waiver Form.

B. If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a request for waiver form documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete, the SRAA shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.

C. If the SRAA, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports, determines that Contractor is failing or refusing to comply with Contract goals and no waiver has been issued regarding such non-compliance, the SRAA may issue a Notice of Deficiency to the Contractor. The Contractor must respond to the Notice of Deficiency within seven (7) business days of receipt. Such a response may include a request for partial or total waiver of MWBE Contract Goals.

## VI. MWBE Compliance Reporting

A. Contractor is required to submit the Subcontractor Quarterly Compliance Report (SRAA Form 5011) to the SRAA by the 10<sup>th</sup> day following each end of quarter over the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract.

B. All reports will be submitted to the SRAA Program Manager for this contract and forwarded to Tori Hunt at [huntt@syrairport.org](mailto:huntt@syrairport.org).

- C. Failure to timely submit a Subcontractor Quarterly Compliance Report and/or other reports or information as requested by SRAA may result in payments under the contract being delayed until such reports or other information have been received by SRAA.<sup>2</sup> The SRAA may also deem other noncompliance with requirements under the Statute as a breach of contract and commence any other means of enforcement permitted under the contract and/or by law.

## **VII. Liquidated Damages – MWBE participation**

- A. Where SRAA determines that Contractor is not in compliance with the requirements of the Contract and Contractor refuses to comply with such requirements, or if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, Contractor shall be obligated to pay to the SRAA liquidated damages.
- B. Such liquidated damages shall be calculated as an amount equaling the difference between: (a) all sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and (b) all sums actually paid to MWBEs for work performed or materials supplied under the Contract.
- C. Determination of compliance or non-compliance with the Contract's MWBE participation requirements shall be based upon the Contractor's Utilization Plan, MWBE Sub-Contractor Quarterly Reports, and any relevant documentation related thereto. The determination of what constitutes the willful and intentional failure to comply with the MWBE participation requirements will be based upon the evaluation of the same criteria considered in evaluating an MWBE subcontractor waiver request.
- D. Upon a determination that a willful and intentional failure to comply with the MWBE participation requirements has occurred, the SRAA shall withhold the amount established in paragraph B from any future payments otherwise required by this Contract. All funds being withheld pursuant to this provision shall be offset as liquidated damages upon the expiration or termination of the contract, unless the Contractor comes into compliance with the MWBE requirements at any time during the term of the Contract but prior to the submission of a request for final payment on the contract. All payments withheld pursuant to this provision shall be released upon SRAA's determination that the Contractor has come into compliance.
- E. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the SRAA, Contractor shall pay such liquidated damages to the SRAA within sixty (60) days after they are assessed by the SRAA unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Woman Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages shall be payable if Director renders a decision in favor of the SRAA.

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<sup>2</sup> Contractors may be requested to provide additional Compliance Reports and information (i) to verify payments made to MWBEs, (ii) to verify MWBE utilization and/or, (iii) as needed to evaluate any other aspect of Contractor compliance with the requirements set forth herein.

## **VIII. Sanctions**

SRAA reserves the right to impose sanctions following a determination of non-compliance by a Contractor. Sanctions may be imposed upon the Contractor whenever EEO and/or MWBE program requirements have not been met in a timely and effective manner. Any/all of the following sanctions may be imposed:

- Disallowance of costs associated with such noncompliance;
- Initiation of procedures to suspend or terminate the grant or contract;
- Withholding of progress payments until such time as corrective actions have been undertaken by the Contractor to the satisfaction of SRAA;
- Deleting Contractor's name from bid lists for a specified period of time to be determined in the sole discretion of SRAA;
- Report Contractor as non-responsible to NYS OSC Vendor Responsibility System; and
- Other sanctions of which a Contractor has notice in writing prior to or during the performance of a contract.